BOOK REVIEWS

Justice and the Poor—A Study of the Present Denial of Justice to the Poor and of the Agencies making more equal their Position before the Law with Particular Reference to Legal Aid Work in the United States. By Reginald Heber Smith. Published for the Carnegie Foundation for the Advancement of Teaching. New York, Charles Scribner's Sons. 1919. pp. xiv, 271.

From the days of Magna Carta, freedom and equality of justice have been the bulwark and the boast of English law. The author's premise that a denial of justice to the poor is the condition which exists today may startle some, and may offend others. To certain persons any statement which may be seized upon by a sensational press as a "scare head-line" suggesting the oppression of the poor by the privileged, is anathema in these days of social unrest. But a perusal of the book should satisfy the most conservative reader that the author is far from asserting any conscious oppression by a dominating group in the community or any discrimination on the basis of wealth in the substantive principles of the law. His thesis is that while the primary rights and duties between man and man are defined by rules of law without partiality, yet in the machinery of administration there are defects so grave that in fact, even though not in theory, the poor are denied court justice. These defects are three—delays, court costs, attorneys' fees—and the potent influence which they exert in the denial of justice is due mainly to comparatively recent changes in conditions brought about by immigration, the rise of the wage-earning class, and the enormously rapid growth of large cities. Few persons realize the volume of "petty litigation" in urban communities. Of 1,224,000 cases entered in the English County Courts in 1913, 98½ *per cent.* were for claims under £20 and the average claim was about £3. In the Cleveland Small Claims Court, which has jurisdiction of claims less than $35, there were 5,106 cases for trial in 1915 and the total judgments were less than $33,000. The wage-earner or small tradesman who has an honest claim of only a few dollars may well think there is no law for him, if the court machinery is such that he must advance costs and attorneys' fees equal to the amount of his claim and must wait months before he can have a trial. Statistics and a liberal citation of the literature of the subject have been brought together by Mr. Smith and present convincing evidence that our court machinery has broken down in the respects mentioned in dealing with the small claims of the city poor.

Having established his premise in the first part of the book, the second portion of the author's study deals with ameliorating agencies which are making for a reform of court machinery in the interest of the poor. Foremost of these is the Small Claims Court. The essential features of such a court are extremely low court costs or none at all, the abolition of formal pleadings, the exclusion of lawyers, the examination of parties and witnesses by a trained judge without formality or the observance of technical rules of evidence, and the prompt trial of the case on the return day. Thus are overcome the three defects of administration which make for a denial of justice in small claims. In several cities such courts have already been established. The small claims court in Cleveland, known technically as the Conciliation Branch of the Municipal Court, is the most nearly perfect type of court for small civil causes which has yet been developed, although, as Mr. Smith points out, there still remains opportunity for improvement in the development of collateral functions, such as providing for

the payment of a judgment by installments and for a trusteeship, if the debtor owes numerous creditors.

Of the other ameliorating agencies mentioned by the author, there is space to refer only to one—the Defender in Criminal Cases. Here the position of the poor man charged with crime is dealt with. That he is entitled to protection before the law and that adequate protection requires adequate representation by counsel, no one will deny. That the state must furnish such counsel has long been recognized in the traditional system of assignment by the court. But this system has resulted either in entrusting the defense to young and inexperienced lawyers, who for the sake of obtaining experience and notoriety are willing to take cases without fees, or to that class of "professional jail-lawyers" whose practices have become a disgrace to the profession and the deepest blot on the administration of criminal justice. It is this condition which has given rise to the defender plan, beginning with the public defender appointed for Los Angeles County, California, in January, 1914. Several other states have followed on. In New York City an organization known as the Voluntary Defenders Committee was financed by public spirited citizens and began work in 1917. Mr. Smith reviews the activities of the several defenders and shows how this plan has raised the tone of criminal trials in their communities. That this is a reform which will develop and spread seems clear. No public spirited attorney can afford to remain ignorant of what has already been done or to form a deliberate opinion as to what the future development should be.

"The office of the attorney is indispensable to the administration of justice, and vital to the well-being of the court."[1] While in small claims cases his functions may usually be performed by the judge, there are numerous other classes of cases where the lawyer's services remain, and will continue, indispensable both in the trial and in advising a client as to substantive rights before trial. This fact and the inability of thousands of persons to pay adequate fees have given rise to Legal Aid Societies. The history of such organizations and their present position throughout the country with relation to the administration of law is stated most clearly in the final part of the book. They have come to rank as one of the greatest of legal reforms. They are doing more to maintain the confidence of thousands of immigrants and of poor citizens in the justice of our laws and in the soundness of our political institutions than any other single agency. Where, then, should one expect to look for leadership and financial support for such organizations? Obviously to the legal profession. That the profession has sometimes failed to give adequate leadership and support in the past is an additional reason for shouldering the responsibility for the future. Many problems of policy confront the Legal Aid organizations. Only if the legal profession will give its deliberate attention to these problems can they be solved aright and only by a right solution can an administration of justice be effected which will give the poor man substantial equality before the law.

Mr. Smith's undertaking began in a study of Legal Aid Societies suggested by the application of certain societies for a grant of funds by the Carnegie Foundation. The book which has resulted is a systematic treatise on the administration of justice in the United States so far as it relates to the causes of the poor. His treatment of the subject exhibits the clear insight of a legal scholar, the accuracy and moderation in statement of a conservative lawyer, and the optimism and liberalism of a practical reformer. Every lawyer and every public spirited citizen who reads this book should feel a debt of gratitude to the author and to the Carnegie Foundation which made possible its publication.

T. W. S.

[1] Killets, J. in *In re Thatcher* (1911, N. D. Oh.) 190 Fed. 969.